

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB      OCT. 29,99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

---

Trademark Trial and Appeal Board

---

In re **Advanced Telecommunication Network, Inc.**

---

Serial No. 75/192,310

---

**Rachel Brendzel** of Blank Rome Comisky and McCauley LLP  
for **Applicant**.

**Frances G. Smith**, Trademark Examining Attorney, Law Office  
113 (Meryl Hershkowitz, Managing Attorney).

---

Before Walters, Chapman and Rogers,  
Administrative Trademark Judges.

Opinion by Rogers, Administrative Trademark Judge:

Applicant seeks registration of ADVANCED ACCESS for  
"prepaid telephone calling card services," in International  
Class 36. In her initial action on the application, the  
examining attorney entered, by examiner's amendment  
indicating the approval of applicant's counsel, a  
disclaimer of ACCESS. Applicant's counsel, however,  
promptly objected to entry of the disclaimer, arguing that  
ACCESS is not descriptive of applicant's services.

The examining attorney then made final the refusal of registration based on applicant's failure to comply with the requirement for the disclaimer, under Section 6 of the Trademark Act, 15 U.S.C. §1056.<sup>1</sup> Applicant has appealed. Both the applicant and the examining attorney filed briefs. An oral hearing was not requested.

The examining attorney contends that calling card services allow users to access telephone lines and applicant's service "simply provides advanced access to callers, by letting them prepay the costs of accessing the telephone lines, so that they will not have the inconvenience of having to find exact change..."

Applicant argues both that ACCESS is not descriptive and need not be disclaimed and that its composite mark ADVANCED ACCESS is not descriptive because it "does not convey any immediate and unambiguous meaning." In denying a request for reconsideration, the examiner attached a good deal of evidence of use of the phrase "advanced access" in the telecommunications industry. Notwithstanding applicant's arguments and the examining attorney's evidence regarding the descriptive significance of the phrase ADVANCED ACCESS, the appeal is limited to the question of

---

<sup>1</sup> We construe the examiner's amendment to embody a written requirement for entry of the disclaimer. Thus, the examining

whether ACCESS is descriptive of prepaid telephone calling card services.

Apart from contesting the sufficiency of the evidence of descriptiveness made of record by the examining attorney, applicant argues (1) that there are existing third-party registrations for marks containing the term "access" which do not include a disclaimer, thereby establishing that it is not the office's practice to require a disclaimer of the term, and (2) that its mark is unitary and that a disclaimer is therefore inappropriate.

In regard to the first of these arguments, we sustain the examining attorney's objection to any consideration of the registrations referenced by the applicant, because they have not been properly made of record and have only been referenced in a list by mark, registration number and goods or services. Inasmuch as the objection is well taken, we have given these registrations no consideration. See **In re Golden Griddle Pancake House Ltd.**, 17 USPQ2d 1074, 1075 (TTAB 1990); see also, **Weyerhaeuser Co. v. Katz**, 24 USPQ2d 1230 (TTAB 1992). In any event, even had we considered the registrations, they would not have been persuasive, as each case must be decided on its own merits. Moreover, even a

---

attorney did not act prematurely in making the refusal of registration final in the second office action.

cursory review of applicant's list of registrations reveals that none are for marks for calling card services.

In regard to the second of its arguments, applicant asserts that the initial "A" in each of the terms in its mark yields an alliterative quality and makes its mark unitary. While it is office policy not to require disclaimers of portions of unitary marks, we are not persuaded that applicant's mark is unitary and entitled to the benefit of this policy.

We are left, then, with the question whether the examining attorney has made of record sufficient evidence to establish the descriptiveness of "access" when used in conjunction with applicant's services. The evidence is assessed from the point of view of the average or ordinary consumer in the class of prospective purchasers for applicant's service. See **In re Omaha National Corporation**, 2 USPQ2d 1859, 1861 (Fed. Cir. 1987). Moreover, the evidence will have to establish that "access" immediately describes an ingredient, quality, characteristic or feature of applicant's services or conveys information regarding the nature, function, purpose or use of the services. See **In re Abcor Development Corp.**, 200 USPQ 215, 217-18 (CCPA 1978); and **In re Gyulay**, 3 USPQ2d 1009 (Fed. Cir. 1987).

The examining attorney, in her brief, argues that "the individual significance of the word 'access' is not lost in the combination 'advanced access.' Customers still perceive the merely descriptive meaning of the word 'access.' They still recognize that the services, providing access to telephone lines through use of prepaid calling cards, is immediately described by the word 'access.'"

The evidence made of record by the examining attorney does not clearly support the conclusion that consumers would immediately think of "access", as it appears in applicant's mark, as meaning, "access to telephone lines." In support of the final refusal of registration, the examining attorney offered 35 references from the LEXIS/NEXIS on-line database, displayed in the abbreviated *Kwic* format. These were culled from among 723 "hits" when the combined search terms "access" and "calling card" were entered. We presume, therefore, that the examining attorney made the most persuasive references of record.

The majority of the references, however, do not discuss accessing telephone lines. Rather, for the most part the excerpts include independent use of "access" as an adjective or a verb to refer to subjects or activities not

clearly or directly related to use of calling cards to access phone lines.<sup>2</sup>

Of the examining attorney's selected references, only the following four provide arguable support for the examiner's refusal of registration, in that they tend to illustrate the use of a calling card to access phone lines or services available by phone:

RMC Internet Services has developed what it says is the nation's first pre-paid Internet calling card. The card will enable travelers to access their local Internet service provider 24 hours a day for both e-mail and the World Wide Web. *The Idaho Statesman, July 31, 1997.*

Premiere will offer these Cardmembers the American Express® Connection<sup>sm</sup> calling card, giving users access to enhanced services. *PR Newswire, July 29, 1997.*

The company will also launch international calling, global access prepaid and postpaid calling cards, fax and other integrated voice and data services later this year. *Asia Computer Weekly, July 7, 1997.*

But what about the increasing number of callers who use their long distance calling cards from pay phones or make calls to 800 numbers? They are using the pay phone to access long distance services but are not paying for the use of the phone. *M2 Presswire, May 22, 1997.*

Two of these references appear to be for wire service reports and one for a publication that may be circulated

---

<sup>2</sup> Many of the excerpts, for example, refer to access codes, numbers, fees and charges; others refer to accessing voice mail, the global computer network, and even buildings.

only in Asia. It is well settled that wire service reports are of limited probative value, since it cannot be assumed that they have been seen by consumers; and use of a term in a foreign publication is discounted, in the absence of evidence of circulation in the United States. See **In re Patent and Trademark Services Inc.**, 49 USPQ2d 1537, 1538 fn 2 (TTAB 1998), and cases cited therein. Even if we assume that these wire service reports appeared in publications circulated in the United States, and that *Asia Computer Weekly* is circulated in the United States, these references providing support for the examining attorney's basic argument are few in number, when compared to the number of "hits" returned by the LEXIS/NEXIS search. Moreover, even these references evidence various uses of the term access, i.e., as a noun, as a verb and as an adjective. With the wide variety of uses of the term "access" in all the references made of record by the examining attorney, we view it as unlikely that consumers would immediately be able to associate a particular meaning for the term when used as part of applicant's mark. Cf. **In re Merrill Lynch, Pierce, Fenner, and Smith Inc.**, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987)(voluminous evidence before the Board included a "mixture of usages unearthed by the NEXIS computerized retrieval service" and did not stand as clear evidence that

CASH MANAGEMENT ACCOUNT was a common descriptive term for the particular services offered by the applicant seeking to register the phrase).

The examining attorney also made of record 13 printouts from the Patent and Trademark Office's search system of applications or registrations wherein the term "access" was disclaimed. Only one of these, however, deals with calling cards, and that is for an abandoned application.

In short, we agree with applicant that the examining attorney has a burden of proof that has not been met to establish the mere descriptiveness of ACCESS in connection with the identified services, and that, in instances of doubt, the office must resolve the doubt in favor of approving the mark for publication. See **In re Merrill Lynch**, *supra*, 4 USPQ2d at 1144.

Decision: The refusal of registration is reversed.

C. E. Walters

B. A. Chapman

G. F. Rogers

Administrative Trademark  
Judges, Trademark Trial  
and Appeal Board